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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/558,917

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Michael S. Wong

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23505

7590

09/08/2008

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EXAMINER

JOHNSON, KEVIN M

ART UNIT

PAPER NUMBER

1793

NOTIFICATION DATE

DELIVERY MODE

09/08/2008

ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

pathou@conleyrose.com

Office Action Summary	Application No. 10/558,917	Applicant(s) WONG ET AL.	
	Examiner KEVIN M. JOHNSON	Art Unit 1793	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 09 June 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-12 and 19-27 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-12 and 19-27 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 112

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claim 8 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

3. Claim 8 recites the limitation "wherein the organic-inorganic material gel structure formed in (c) is an aerogel or xerogel" in lines 1-3. There is insufficient antecedent basis for this limitation in the claim. There is no mention of a gel structure in (c) of claim 1. For the purposes of examination (c) has been interpreted as referring to (d) in which a gel structure is referenced.

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.

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4. Considering objective evidence present in the application indicating obviousness or nonobviousness.
3. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).
4. Claims 1-5, 7, 9-12, 19-27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wong et al. (Nano Letters, 2001, Vol.1, No. 11, p 637-642) in view of Brinker et al. (Adv. Mater. 1999, 11, No. 7, p 579-585).

In regard to claim 1, Wong teaches a method of producing mesoporous metal oxides using nanoparticle precursors. The method comprises preparing a colloidal nanoparticle sol and a solution of a surfactant and a tungstate salt, mixing the solutions to form a precipitate, drying the material and then the removal of the pore-forming agent from the dried material (column 1, p 638). The solution taught by Wong is clear until the formation of precipitates (column 1, p 638). Wong fails to teach that the solution of the nanoparticles, surfactant and tungstate salt is clear.

Brinker teaches that an evaporation induced self-assembly process. The process involves forming a solution that contains a surfactant and a precursor to the desired mesoporous material, and then drying the solution to induce the self-assembly

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of a gel structure (p 580). Brinker teaches examples of surfactant-soluble silica mixtures that are dehydrated to form organic-inorganic mesophases (p 580). This process is especially suited to the formation of thin films of the mesophase on a substrate in a way that was not possible in previous synthesis processes (p 579).

It would have been obvious to one skilled in the art at the time of the invention to alter the solution in the process taught by Wong to utilize an evaporation induced self-assembly (EISA) process as taught by Brinker. Such a modification would have been motivated by the teaching in Brinker that an EISA process is uniquely suited for use in a sol-gel dip-coating process (column 2, p 580), and the teaching in Wong that the process used is analogous to the production of silica mesoporous materials like those produced in Brinker (column 1, p 637). Utilizing a dip-coating process would allow the material produced by Wong to be used in applications that require a supported catalyst, improving the industrial applicability of the material. It would have been further obvious to one skilled in the art at the time of the invention that the solution of the surfactant, tungstate salt and nanoparticles taught by Wong would be clear when the formation of a precipitate is avoided.

In regard to claim 2, Wong teaches that the catalytic precursor component is a tungstate salt (column 2, p 637).

In regard to claim 3 and 24, Wong fails to teach the use of a cationic, anionic or zwitterionic surfactant. However, Wong does teach that the nonionic surfactants associate with an H⁺ ion, and therefore acts in a manner similar to a cationic surfactant (column 2, p 640).

Brinker teaches the use of the cationic surfactant cetyltrimethylammonium bromide (CTAB) as a pore-forming and structure directing agent (column 2, p 580).

It would have been obvious to one skilled in the art at the time of the invention to substitute CTAB for the pluronic P123 surfactant used by Wong in the synthesis of the mesoporous metal oxide. This would have been motivated by the teaching of Wong that the nonionic surfactant used bonds with a hydrogen ion to achieve a positive charge (column 2, p 640), allowing it to act in a similar manner to cationic surfactants, and the suggestion that other types of surfactants could be used (column 2, p 641).

In regard to claim 4, Wong teaches a method of producing a mesoporous metal oxide catalyst where instead of using pre-formed nanoparticles, a precursor salt was added to the surfactant solution (Column 1, p 641).

In regard to claim 5, Wong teaches the use of zirconium oxide (column 1, p 638), titania (column 2, p 640) and alumina nanoparticles (column 1, p 641).

In regard to claim 7, the metal salt utilized by Wong as a catalyst precursor is ammonium metatungstate (column 1, p 638).

In regard to claim 9 and 11, Wong teaches that the material is completely amorphous (column 2, p 638).

In regard to claim 10, it would have been obvious to one skilled in the art at the time of the invention that due to the surface area of $130 \text{ m}^2/\text{g}$ and WO_3 loading of 30.5 wt-% taught by Wong, the surface density of the tungsten oxide on the zirconia would be approximately $6.0 \text{ molecules/nm}^2$. It is known in the art that the monolayer surface density of tungsten on a zirconia support is 4 molecules/nm^2 , and therefore the surface

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density of the material produced by Wong exceeds the monolayer surface density of the catalytic component.

In regard to claim 12, Brinker teaches that as a result of an EISA process organic and inorganic polymerization take place to complete the assembly process (column 2, p 582). It would be obvious to one skilled in the art at the time of the invention that the inorganic polymerization taught by Brinker would affect the inorganic catalyst precursor taught by Wong.

In regard to claims 19-23 and 25-26, the surfactant used by Wong is a nonionic poly(ethylene oxide)-poly(polypropylene oxide)-poly(ethylene oxide) triblock copolymer of the form EO₂₀PO₇₀EO₂₀ in conjunction with zirconium oxide nanoparticles and a catalytic component comprising tungsten.

In regard to claim 27, Wong teaches that the material is calcined to remove the pore-forming agent (column 1, p 638).

5. Claims 6 and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wong in view of Brinker as applied to claim 1 above, and further in view of Abe et al. (US 5439865).

In regard to claims 6 and 8, Wong and Brinker fail to teach the production of an aerogel by the use of supercritical conditions to dry the precursor solution.

Abe teaches that an aerogel may be formed by applying supercritical drying to the gel structure produced by a sol-gel process (column 1, lines 36-37). Supercritical drying conditions allow for the formation of an aerogel that has a higher specific surface area than a xerogel produced by normal-pressure drying (column 2, lines 26-29).

It would have been obvious to one skilled in the art at the time of the invention to apply supercritical drying to the material produced in the process obviated by Wong and Brinker resulting in the production of an aerogel. Such a modification would have been motivated by the teaching in Brinker that aerogels dried under supercritical conditions have a higher specific surface area, and therefore improved catalytic performance, than materials dried under normal conditions.

Response to Arguments

6. Applicant's arguments with respect to claims 1-26 have been considered but are moot in view of the new ground(s) of rejection. The addition of the requirement that a clear solution be formed in (c) and the drying of the clear solution to form a gel structure has changed the scope of the claim, and therefor a new rejection of the claims has been properly set forth.

Conclusion

7. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any

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extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to KEVIN M. JOHNSON whose telephone number is (571)270-3584. The examiner can normally be reached on Monday-Friday 7:30 AM to 5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jerry Lorengo can be reached on 571-272-1233. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Kevin M Johnson/
Examiner, Art Unit 1793

/Elizabeth D. Wood/
Primary Examiner, Art Unit 1793